

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE MAGNAVOX COMPANY, a
Corporation, and SANDERS
ASSOCIATES, INC., a
Corporation,

Plaintiffs,

v.

BALLY MANUFACTURING
CORPORATION, a Corporation,
et al.,

Defendants.

Civil Action
No. 74 C 1030

PLAINTIFFS' SECOND SUPPLEMENTAL RESPONSES
TO FIRST INTERROGATORIES TO PLAINTIFFS
BY DEFENDANT MIDWAY MFG. CO.

Plaintiffs, The Magnavox Company and Sanders Associates, Inc. (hereinafter "Magnavox" and "Sanders", respectively), through their undersigned attorneys and agents, hereby supplement their responses to interrogatories 1(c), 1(d), 4(c), 4(d), 7, 8, 9(c), 9(d), 10, 11, 12, 14, 15, 16, 17, 18, 23, 26, 27, 28, 29, 30, 31, 34, 35, 38, 39, and 54 served upon them by defendant Midway Mfg. Co. (hereinafter "defendant"). The original responses were served upon defendant on November 4, 1974 under the title "Plaintiffs' Responses to First Interrogatories to Plaintiffs by Defendant Midway Mfg. Co." The answers supplied are based on information obtained from those employees of plaintiffs having knowledge of the relevant facts or the knowledge of plaintiffs' attorneys.

The interrogatories to the two separate plaintiffs to

Attachment B

which supplemental responses are being provided are virtually identical. For the convenience of the Court and the parties, the supplemental responses of both plaintiffs are set forth in this single document. Where there are slight differences in the interrogatories to the two different plaintiffs, the interrogatory to Magnavox is set forth first with the response of Magnavox followed by the interrogatory to Sanders with the response of Sanders. In the remaining interrogatories, the responses of both plaintiffs are identical unless separate responses for the individual defendants are set forth.

1. State whether plaintiff has made or caused to be made any searches or studies as to the validity of:

(c) U.S. Patent No. 3,728,480;

(d) U.S. Patent No. 3,778,058.

SUPPLEMENTAL RESPONSE:

(c)-(d) Plaintiffs' responses to paragraphs (c) and (d) of interrogatory 1 are the same as the first supplemental responses to parts (a) and (b) of defendants' interrogatory 1.

4. Identify all documents prepared by or for the alleged inventors or received by them relating or referring in any way to the preparation or filing of the patent applications which issued respectively as the following listed patents, or any parent application thereof:

(c) U.S. Patent No. 3,728,480;

(d) U.S. Patent No. 3,778,058.

SUPPLEMENTAL RESPONSE:

(c) See the produced documents.

(d) See the produced documents.

7. Identify all documents relating in any way to the prosecution in the United States Patent Office of the application or applications which led to the issuance of U.S. Patent No. 3,728,480.

SUPPLEMENTAL RESPONSE:

See the produced documents and the files of the United States Patent and Trademark Office relating to U.S. Patent 3,728,480.

8. Identify all documents relating in any way to the prosecution in the United States Patent Office of the application or applications which led to the issuance of U.S. Patent No. 3,778,058.

SUPPLEMENTAL RESPONSE:

See the produced documents and the files of the United States Patent and Trademark Office relating to U.S. Patent 3,778,058.

9. Identify all licenses and other contracts at any time granted, made, or offered by plaintiff under or with respect to:

(c) Patent No. 3,728,480, the application therefor, the alleged invention thereof, or any corresponding foreign patents or patent applications; and

(d) Patent No. 3,778,058, the application therefor, the alleged invention thereof, or any corresponding foreign patents or patent applications.

SUPPLEMENTAL RESPONSES:

(c) See the produced documents.

(d) See the produced documents.

10. Identify all documents relating in any way to efforts or offers (including formal or informal negotiations of any type) made by or to plaintiff to license under, sell or buy, or otherwise deal with any of said four patents, the applications therefor, the alleged inventions thereof, or any corresponding foreign patents or patent applications, and with respect to each document, specify which of the four were involved.

SUPPLEMENTAL RESPONSE:

Plaintiffs will supply the requested information relating to U.S. Patents 3,728,480 and 3,778,058 by producing for inspection by defendant all documents sought to be identified and subject to a proper request for production.

11. Identify all foreign patent applications filed corresponding to each of said four patents, indicating (a) the respective correspondence; (b) the respective patent numbers of each patent which issued on such applications; and (c) the references cited during the prosecution, examination, or opposition of all of such applications. If there are or were no such foreign applications corresponding respectively to each of the patents, so state.

SUPPLEMENTAL RESPONSE:

The information requested with respect to U.S. Patent 3,778,058 is the same as that previously supplied by plaintiffs with respect to U.S. Patent 3,659,284. The following information is supplied with respect to foreign applications corresponding to U.S. Patent 3,728,480:

<u>Country</u>	<u>Application No.</u>	<u>Patent No. (if any)</u>	<u>Cited References</u>
Australia	52329/69	440,524	Australian Patent Nos. 26092/57 (219,941); 6251/66 (409,631); 8962/66 (406,549); and 52570/64 (401,518)
Canada	045,885	934,056	U.S. Patents 2,595,646; 3,046,676; 2,559,388 and 2,978,540, "Electronics" December 11, 1959, Vol. 32, No. 5, pp. 28-29, Canadian Patent 519,290
England	13242/69	1268821	British Patents 871,238 and 633,424

<u>Country</u>	<u>Application No.</u>	<u>Patent No. (if any)</u>	<u>Cited References</u>
Israel	31836	31836	U.S. Patents 3,046,676; 2,595,646; 2,552,022; 2,648,724; 3,151,248; and 2,621,246
Belgium	79290	739,124	
Greece	44	45937	
Belgium	71444		
France	PV 69.07714	2034340	British Patents 871,238 and 633,424 French Patents 1,358,474 and 1,466,114 U.S. Patents 3,122,607 and 3,271,032
Germany	P 19 17 437.9-31		"Funk und Ton", 1954, pp. 179-186; "Radio Mentor" 1964, No. 12, pp. 738 & 739; "Grundig Technische Informationen", April 1964, p. 752 "Electronics", January 1954, pp. 141-143 German patents 1,211,250 and 1,089,800 U.S. Patent 2,455,992 Belgian Patent No. 704,866 Swiss Patent No. 512,864
Holland	69,04775		British Patents 871,238 and 633,424 U.S. Patents 3,122,607 and 3,271,032 French Patents 1,358,474 and 1,466,144
Italy	14194A	961012	
Japan	27171/69		"OKI DENKI GIHO", Vol. 34, No. 1, pp. 80-82 "Proceedings - Fall Joint Computer Conference" 1965, pp. 257-265 (pp. 847- 855) U.S. Patent 3,220,732

<u>Country</u>	<u>Application No.</u>	<u>Patent No. (if any)</u>	<u>Cited References</u>
Sweden	3520/69		U.S. Patent 3,046,676 French Patent 1,180,470 British Patent 633,424
Switzerland	4101/69	512,864	
Argentina	S/243.732		
India	1531/72		
Mexico	136582		
Spain	406.015		
Venezuela	1572-72	30146	

12. Identify, with respect to each of the foreign patent applications identified in the answer to the foregoing interrogatory:

(a) all communications with the respective foreign patent offices;

(b) all communications between the inventors, Sanders Associates, Inc., or their representatives, and the foreign associates or agent representing them in the respective foreign patent offices;

(c) all memoranda relating to the preparation, filing or prosecution of all such foreign patent applications;

(d) all communications with outside counsel relating to the preparation, filing and prosecution of all such foreign patent applications; and

(e) all other communications relating to such foreign patent applications, the patents which issued from said applications and/or any attempts to enforce or license any of such foreign applications or patents.

SUPPLEMENTAL RESPONSE:

(a)-(e) As to U.S. Patents 3,728,480 and 3,778,058, see the produced documents.

14. Identify each and every claim of each of said patents which plaintiff contends in good faith is infringed by defendant Midway.

SUPPLEMENTAL RESPONSE:

Neither of plaintiffs charge that any coin operated video games previously sold by defendant Midway or now being sold by defendant Midway or Midway's activities with respect to those games constitute an infringement of either of U.S. Patents 3,728,480 and 3,778,058.

15. (Magnavox) State separately for each of said patents whether plaintiff or Sanders Associates, Inc. has made commercial use of the alleged inventions, and if so, identify the specific claims which cover each of the alleged inventions of which commercial use was made.

SUPPLEMENTAL RESPONSE:

Plaintiffs object to this interrogatory insofar as it requests information concerning U.S. Patents 3,728,480 and 3,778,058 for the same reasons as are stated in their original responses to defendant's interrogatory 15 with respect to U.S. Patents 3,659,284 and 3,659,285. However, in order to advance the resolution of this action, plaintiffs further respond to this interrogatory by stating that plaintiff Magnavox has made commercial use of the inventions of U.S. Patents 3,728,480 and 3,778,058, that in view of the responses to defendant's interrogatory 14 and the objection to this interrogatory there is no need to state which claims of U.S.

Patents 3,728,480 and 3,778,058 cover the commercial uses of plaintiff Magnavox, and that plaintiff Sanders has made no commercial use of the inventions of U.S. Patents 3,728,480 and 3,778,058.

15. (Sanders) State separately for each of said patents whether plaintiff or The Magnavox Company has made commercial use of the alleged inventions, and if so, identify the specific claims which cover each of the alleged inventions of which commercial use was made.

SUPPLEMENTAL RESPONSE:

See the supplemental response herein to interrogatory 15 to Magnavox.

16. As to each claim of each patent referred to in the preceding interrogatory, state the date when such commercial use began and when it ended.

SUPPLEMENTAL RESPONSE:

Each such commercial use began in approximately April, 1972 and has continued to the present.

17. With respect to the commercial use referred to in the preceding interrogatories, identify separately for each patent claim, the devices and apparatus in which the alleged inventions were embodied.

SUPPLEMENTAL RESPONSE:

For each such commercial use the device and apparatus was Magnavox Model Number 1TL 200.

18. Does plaintiff contend that any of the alleged inventions of said patents are a commercial success? If so, state which inventions and the corresponding patent and patent claims which are alleged to cover such inventions, and identify the particular commercial devices or apparatus, by model number or other trade designation, which embodied such inventions.

SUPPLEMENTAL RESPONSE:

Plaintiffs have no present intentions to contend in this action that the subject matter of the claims of U.S. Patents 3,728,480 and 3,778,058 are a commercial success since those patents are not in issue in this case.

23. Identify all sales literature, press releases, promotional material, and technical articles written by or for plaintiff and which refers to one or more of the following:

- (a) any of said patents;
- (b) the alleged inventions of said patents;
- (c) the applications for said patents;
- (d) applications or patents corresponding to said patents and foreign to the United States;
- (e) so-called video or t.v. games; and
- (f) coin-operated games.

SUPPLEMENTAL RESPONSE:

See the produced documents.

26. State the following concerning apparatus or devices built by, or for, plaintiff that embodied the purported invention of Patent No. 3,659,285:

- (a) the date of construction of the first model sold to another;
- (b) the date of the sale and the identity of the purchaser;
- (c) its model number, or other identification;
- (d) the identity of each person who either designed or supervised the construction of the portion of the apparatus or devices to which said patent is pertinent.

SUPPLEMENTAL RESPONSE:

MAGNAVOX

The responses to paragraphs (a)-(d) of this interrogatory are the same as Magnavox's responses to paragraphs (a)-(d), respectively, of defendant's interrogatory 24.

SANDERS

Not applicable.

27. State the following concerning apparatus or devices built by, or for, plaintiff that embodied the purported invention of Patent No. 3,778,058:

- (a) the date of construction of the first model sold to another;
- (b) the date of the sale and identity of the purchases;
- (c) its model number, or other identification;
- (d) the identity of each person who either designed or supervised the construction of the portion of the apparatus or devices to which said patent is pertinent.

SUPPLEMENTAL RESPONSE:

MAGNAVOX

The responses to paragraphs (a)-(d) of this interrogatory are the same as Magnavox's responses to paragraphs (a)-(d), respectively, of defendant's interrogatory 24.

SANDERS

Not applicable.

28. (a) State separately for each of said patents each element of each claim which plaintiff contends is not in the prior art.

SUPPLEMENTAL RESPONSE:

Plaintiffs' response to interrogatory 28 insofar as it requests information relating to U.S. Patents 3,728,480 and 3,778,058 is the same as plaintiffs' original response to interrogatory 22 as it relates to U.S. Patents 3,659,284 and 3,659,285.

29. State the respective dates on which each of the alleged inventions of each of said patents was made.

SUPPLEMENTAL RESPONSE:

Plaintiffs' response to interrogatory 29 insofar as it requests information relating to U.S. Patents 3,728,480 and 3,778,058 is the same as plaintiffs' original response to interrogatory 22 as it relates to U.S. Patents 3,659,284 and 3,659,285.

30. State plaintiff's contention as to the scope and content of the prior art at the time each of the alleged inventions of the following patents was made:

(c) Patent No. 3,728,480;

(d) Patent No. 3,778,058.

SUPPLEMENTAL RESPONSE:

(c)-(d) The requested contentions are set forth in the patents and the papers on file in the United States Patent and Trademark office which led to the granting of those patents.

31. If it is plaintiff's contention that any one of said patents claims more than one invention, then describe the plaintiff's contention as to the scope and content of the prior art at the time each of those alleged inventions of such patent was made.

SUPPLEMENTAL RESPONSE:

Insofar as this interrogatory requests plaintiffs' contentions as to U.S. Patents 3,728,480 and 3,778,058, plaintiffs do not presently intend to contend in this action that either of said patents claims more than one invention.

34. State plaintiff's contention as to the differences between the prior art and the claims of Patent No. 3,728,480 which plaintiff alleges are infringed by defendant, Midway, and fully describe such differences.

SUPPLEMENTAL RESPONSE:

In view of plaintiffs' response to defendant's interrogatory 14, no response is required.

35. State plaintiff's contention as to the differences between the prior art and the claims of Patent No. 3,778,058 which plaintiff alleges are infringed by defendant Midway, and fully describe such differences.

SUPPLEMENTAL RESPONSE:

In view of plaintiffs' response to defendant's interrogatory 14, no response is required.

38. State plaintiff's contention as to the level of ordinary skill in the art at the time the alleged invention(s) of Patent No. 3,728,480 was made, and describe said level of skill.

SUPPLEMENTAL RESPONSE:

See plaintiffs' response to defendant's interrogatory 36.

39. State plaintiff's contention as to the level of ordinary skill in the art at the time the alleged invention(s) of Patent No. 3,778,058 was made, and describe said level of skill.

SUPPLEMENTAL RESPONSE:

See plaintiffs' response to defendant's interrogatory 36.

54. Did plaintiff or its attorneys or representatives have any oral interviews with the Patent Office Examiner with respect to the prosecution of the applications (including parent applications) for said four patents? If yes, as to each interview:

- (a) identify the persons in attendance at the interview and the application in respect to which the interview was conducted;

- (b) the date of the interview;
- (c) summarize the discussion at the interview;
- (d) identify any documents relating to the interview, including but not limited to, drafts of claims discussed with the Examiner and memoranda or notes of the attorney; and
- (e) identify each device or apparatus, if any, shown to the Examiner during the interview.

SUPPLEMENTAL RESPONSE:

U.S. Patent 3,728,480

- (a) Louis Etlinger, Richard I. Seligman, Ralph H. Baer, Examiners Stout and Murray and other unidentified Patent and Trademark Office personnel
- (b) July 30, 1970
- (c) The defendant is referred to the file wrapper for information regarding the discussion.
- (d) No documents exist regarding the interview
- (e) Experimental model was shown to the Examiner at the interview.

U.S. Patent 3,778,058

- (a) Telephone interview; Richard I. Seligman, Examiner Stauffer
- (b) July 9, 1973

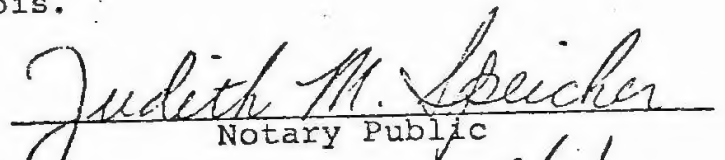
- (c) The defendant is referred to the file wrapper for information regarding the discussion.
- (d) No documents exist regarding the interview.
- (e) Not applicable.

June 9, 1975

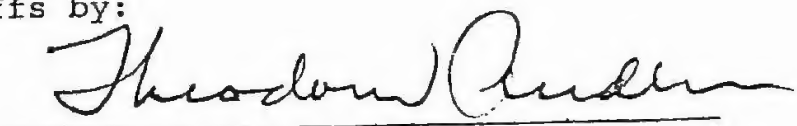

Theodore W. Anderson

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Subscribed and sworn to before me this 9th day of
June, 1975, in Chicago, Illinois.


Notary Public
My Commission Expires: 9/7/77

The foregoing objections and contentions are
asserted on behalf of plaintiffs by:


Theodore W. Anderson

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